

**In the District Court of the United States
for the District of Nebraska, Omaha
Division**

No. 3763—Law

**JOSEPH W. WOODROUGH AND ELLA B. WOODROUGH,
PLAINTIFFS AND APPELLEES**

v.

**GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLEC-
TOR OF INTERNAL REVENUE, DEFENDANT AND APPEL-
LANT**

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, adopted February 13, 1939, the appellant submits herewith his statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment here complained of is conferred by Section 2 of the Act of August 24, 1937, c. 754, 50 Stat. 751.

B. The statute of the United States, the validity of which is involved herein, is Section 22 (a) of the Revenue Act of 1936, c. 690, 49 Stat. 1648, which provides, to the extent here material, as follows:

In the case of Presidents of the United States and judges of courts of the United

States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

C. The judgment of the District Court sought to be reviewed was entered on the 18th day of March 1939 and the application for appeal was filed on the 18th day of March 1939 and is presented to the District Court herewith, to wit, on the 18th day of March 1939.

This suit was brought to recover income taxes, together with interest, paid to the defendant with respect to compensation received by plaintiff Joseph W. Woodrough in 1936 as judge of the United States Circuit Court of Appeals for the Eighth Circuit. The sole objection to the tax was that the statute imposing it was alleged to be unconstitutional. The reasons assigned by plaintiffs to support their charge of invalidity fall into three groups: (a) that the tax is violative of Article III, Section 1, of the Constitution, which provides in part that Judges of inferior courts of the United States "shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office"; (b) that the tax is violative of an implied constitutional limitation arising out of Articles I, II, and III of the Constitution creating three independent branches of Government; and (c) that the tax is repugnant to the Fifth Amendment to the Consti-

tution. The defendant filed a motion to dismiss which the District Court, after argument, overruled. Defendant then filed a statement to the effect that he stood upon the Motion to Dismiss, and would not plead over. The Court thereupon filed an amendment to its Order overruling the Motion to Dismiss, setting forth the grounds for overruling said Motion as being that he concluded that the Statute involved is unconstitutional. The Plaintiffs thereupon filed a Motion for Judgment on the Pleadings, and Judgment was entered for the Plaintiffs. The District Court did not deliver any opinion.

The following decision is believed to sustain the jurisdiction of the District Court: *United States v. Bekins*, 304 U. S. 27.

Respectfully submitted.

/ ROBERT H. JACKSON,
Solicitor General,

By JOSEPH T. VOTAVA.

JOSEPH T. VOTAVA,
United States Attorney for
the District of Nebraska.

[Endorsed:] Filed MAR. 18, 1939.

R. C. HOYT, Clerk.